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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JAN 17 1975
H. STUART CUNNINGHAM
At.........o'clock.........
CLERK

THE MAGNAVOX COMPANY, a Corporation, and SANDERS ASSOCIATES, INC., a Corporation,

Plaintiffs,

v.

Civil Action
No. 74 C 1030

BALLY MANUFACTURING CORPORATION, a Corporation, CHICAGO DYNAMIC INDUSTRIES, INC., a Corporation, ATARI, INC., a Corporation, ALLIED LEISURE INDUSTRIES, INC., a Corporation, EMPIRE DISTRIBUTING, INC., a Corporation, and MIDWAY MFG. CO., a Corporation,

Defendants.

The deposition of HENRY ROSS, called by the Plaintiffs for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Michael J. Shapiro, a notary public within and for the County of Lake and State of Illinois, at the offices of Neuman, Williams, Anderson and Olson, 77 West Washington Street, Chicago, Illinois, on Tuesday, June 25, 1974, at 9:30 o'clock a.m.

LEON M. GOLDING AND ASSOCIATES, CHICAGO

I N D E X

Witness	Direct Examination
Henry Ross	3

E X H I B I T S

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LEON M. GOLDING AND ASSOCIATES, CHICAGO

APPEARANCES:

Mr. Theodore W. Anderson,
Mr. James Williams,
(Neuman, Williams, Anderson & Olson,)
77 West Washington Street,
Chicago, Illinois 60602,
and
Mr. Thomas A. Briody,
(Corporate Patent Counsel
The Magnavox Company)
Fort Wayne, Indiana 46804,
appeared on behalf of plaintiffs;

Mr. Thomas O. Herbert,
(Flehr, Hohbach, Test, Albritton & Herbert)
160 Sansome Street, 15th Floor,
San Francisco, California 94104,
appeared on behalf of Defendant Atari, Inc.,

Mr. Donald L. Welsh,
(Fitch, Even, Tabin & Luedeka),
135 South LaSalle Street,
Chicago, Illinois 60603,
appeared on behalf of Defendants Bally Manufacturing Corporation, Empire Distributing, Inc., and Midway Manufacturing Co.

Also Present:

Mr. John Anthony Britz.

MR. ANDERSON: Don't I understand that this witness is on behalf of Midway, is that correct?

MR. WELSH: Yes.

MR. ANDERSON: And the order will be what, Midway, Bally, and Empire, then?

MR. WELSH: Right. And we will call the man from Empire when we finish. Mr. Britz of Bally is hoping to be here about 10:30.

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MR. ANDERSON: All right.

HENRY ROSS,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Anderson:

Q Please state your full name?

A Henry Ross.

Q Where do you reside?

A 245 Oaksbury, Palatine, Illinois.

Q By whom are you employed?

A Midway Manufacturing.

Q What is your position with Midway?

A Secretary-treasurer.

MR. ANDERSON: I will have the reporter mark as Ross Deposition Exhibit 1 a Notice of Taking Deposition served on the defendant Midway Manufacturing Co.

(The document above referred to was marked Ross Deposition Exhibit 1 for identification.)

By Mr. Anderson:

Q Mr. Ross, have you seen this Notice of Deposition before, Exhibit 1?

A It appears to be one similar to what I

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looked at, I am not sure. I think it is.

Q The notice was served upon Midway Manufacturing Company under Rule 30(b)6 which requires the company to designate an officer, director or managing agent to testify with respect to the subjects set forth in the notice.

Are you that designee?

A Yes.

Q Have you prepared yourself to testify on the subjects set forth?

A Yes.

Q And what have you done to prepare yourself, if anything?

A Reviewed the facts.

Q In what form? Did you review any files?

A I reviewed my files, I reviewed my memory, and talked to my attorney.

Q You reviewed your own files?

A Right.

Q Any other files of the company, other than your own?

A When I said "my files", I meant the company files.

Q The Notice of Deposition also requests that

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you produce at this deposition certain documents. Have you brought those documents with you today?

MR. WELSH: I have just one document in response to the request. That is this document (indicating).

MR. ANDERSON: Let the record show Mr. Welsh has handed me a document entitled Agreement. It appears to be between Atari, Inc. and Midway Manufacturing Co.

I will ask the reporter to mark that as Ross Deposition Exhibit 2.

(The document above referred to was marked Ross Deposition Exhibit 2 for identification.)

By Mr. Anderson:

Q Mr. Ross, I show you the agreement Ross Deposition Exhibit 2. Are you familiar with that document?

A Yes, sir.

Q Do you have another copy in front of you?

A Yes, sir.

Q In paragraph 7 of that agreement, there is reference to an earlier agreement dated July 1, 1972. Do you have that agreement with you today?

A To my knowledge, that is incorrect. There

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was no agreement between Atari and Bally.

Q Was there some sort of a discussion or correspondence of some kind?

A Can I answer?

MR. WELSH: Yes.

By Mr. Anderson:

Q On or about July 1, 1972?

Mr. Ross, do you know the answer to that question?

A Yes.

Q What is the answer to that question?

A The agreement was between Bally and Nolan Bushnell.

Q Do you have a copy of that agreement with you today?

A No.

MR. ANDERSON: May we have a copy of that agreement, Mr. Welsh?

MR. WELSH: That agreement would be subject to any confidential disclosure understanding that we have. I did not bring it with me nor will Mr. Britz bring it with him because it did not respond to the document request either of Bally, that is, in the notice to Bally. It was not between Bally and

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Atari, as the description of documents called for.

Q The agreement referred to in paragraph 7 of Ross Deposition Exhibit 2, if I understand you, then, is an agreement between Bally and Nolan Bushnell?

A Yes.

Q Do you know what, if any, activities were carried out pursuant to the agreement of July 1, 1972?

MR. WELSH: I think before we go any farther, we had better resolve the question of a confidential disclosure agreement. I think maybe we ought to go off the record while I look at your letter and the proposed changes.

MR. ANDERSON: All right.

(Discussion off the record.)

MR. ANDERSON: Can you read the last question, Mr. Shapiro?

(The question was read.)

THE WITNESS: No.

By Mr. Anderson:

Q You have no knowledge?

A No knowledge of any activities before that date. You are referring to July, '72?

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Q No, subsequent to July 1, 1972.
A No, I have no knowledge of anything happening before that date.
Q All right. Do you have any knowledge of anything happening after that date, July 1, 1972?
A Some.
Q All right. What is the first thing that occurred that you know of after July 1, 1972, as between Atari and any of the Bally companies?

MR. WELSH: Now, do you want me, after each question, to indicate that I think this is confidential, or do you want -- I think any of the questions here that relate to that other agreement or what was done under it I would consider to have the same confidential nature as the agreement itself.

MR. ANDERSON: Now, I understand that the agreement, Deposition Exhibit 2, is not confidential. That was not designated confidential.

MR. WELSH: We are not making a claim with respect to that.

MR. ANDERSON: But with respect to the prior agreement referred to at paragraph 7 of Exhibit 2, an agreement between Atari and Bally dated July 1, 1972, you say that that is confidential?

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MR. WELSH: Yes.

MR. ANDERSON: Is there any conceivable way I can know what Exhibit 2 means without having access to that earlier document that is incorporated by reference in paragraph 7, Mr. Welsh?

MR. WELSH: I can arrange for you to have the document. I can call my office and have it brought over.

MR. ANDERSON: I think that is virtually essential to an understanding of Exhibit 2.

(Discussion off the record.)

By Mr. Anderson:

Q Mr. Ross, do you know what the difference is between the Syzygy model VP-1 and Syzygy model VP-2?

A I think I do.

Q What is the difference?

A The first game was their game known as Pong.

Q And that is a VP-1?

A That would be the VP-1 to the best of my knowledge. VP-2 was a game called Asteroid, which was not a paddle game.

Q How long have you been secretary-treasurer

of Midway?

A Since 1958.

Q Have you at any time been president of Midway?

A No, sir.

Q I would like you to refer to page 3 of Ross Deposition Exhibit 2, in which the signature indicates George Blahuta, by direction of Henry Ross, president.

Can you explain that?

A Well, it is a mistake, obviously. I am more or less in the forefront in communicating with people on the outside, and they automatically assume I am president.

Q Who is the -- excuse me, I didn't mean to interrupt you.

A That was the end of the sentence. Mr. Wolverton is the president.

Q How do you spell that?

A W-o-l-v-e-r-t-o-n.

Q Is he active in the company?

A Yes, sir.

Q Who is the signator at page 3 of Exhibit 2 for Atari, Inc. Is that Nolan Bushnell?

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A I wish I -- I don't know. I assume so. I don't know.

Q Do you know if Nolan Bushnell was in 1973 president of Atari?

A To the best of my knowledge.

Q Do you know if he was president of Atari in July of 1972?

A I don't know if there were an Atari in July, '72. If there were, I wouldn't know if he were the president at that time.

Q Were you involved in the actual negotiations of the agreement, Exhibit 2?

A This is Exhibit 2 I am looking at?

Q Yes.

A Yes.

Q How were you involved?

A We made an agreement with Nolan Bushnell to pay him a royalty to build a version of his game called Pong. I sent my chief electronic engineer, Mr. Blahuta, there to coordinate the exchange of engineering information.

Before Mr. Bushnell would give this information, he insisted on a written agreement to cover

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the points we verbally discussed.

Q When you say "we" exactly whom do you mean?

A Mr. Bushnell and myself.

Q So the July 1, 1972 agreement followed personal discussions between you and Mr. Bushnell?

A No, sir.

MR. WELSH: I think he was discussing this agreement, counsel.

THE WITNESS: I am sorry. I am discussing this agreement, correct.

By Mr. Anderson:

Q You are referring to Exhibit 2, then, when you say that that was a required written agreement before Mr. --

A Bushnell.

Q Well, Blahuta --

A Correct.

Q -- could obtain information in California?

A Correct.

Q Am I correct?

Now, there was a prior agreement between some Bally company or entity and Atari or Bushnell, am I correct?

A Yes.

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Q And under that agreement, were you concerned with the Pong game or the Asteroid game or something else?

A Just the Pong at that point.

Q That was now prior to 1973, to February of 1973?

A Would you repeat your question, please?

MR. ANDERSON: Would you read the record?

THE WITNESS: Would you rephrase that? I don't quite understand what you are asking me. We signed this in February of '73.

MR. ANDERSON: All right, let's see. Perhaps we should be a little bit cautious here.

Mr. Britz, is it?

MR. BRITZ: That's right.

MR. ANDERSON: B-r-i-t-z?

MR. BRITZ: Yes.

MR. ANDERSON: We are operating under a confidential agreement involving Midway and Atari and Magnavox at this point. Now, is it all right if Mr. Britz stays in the room?

MR. WELSH: Oh, yes. He is with the defendant Bally and he is familiar with these facts. I mean, it is our claim of confidentiality.

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MR. ANDERSON: Whose, Midway or Bally's?

MR. WELSH: Midway and Bally, to the extent that they are involved.

MR. ANDERSON: Then, will we have to draw any distinction at all between Midway and Bally in the course of these depositions, or can we treat them, for this confidential relationship, as a single entity?

MR. WELSH: I don't think you can treat them as a single entity for any purpose.

MR. ANDERSON: Then perhaps we should exclude Mr. Britz.

MR. WELSH: No, I don't think that will be necessary, either. For purposes of the confidentiality aspect, it is really Bally's claim of confidentiality and Mr. Ross happens to have knowledge of some of the facts that surround that other agreement.

By Mr. Anderson:

Q Was the prior agreement of July 1, 1972 inwriting, Mr. Ross?

A Yes.

Q Were you a signator to it?

A No, sir.

Q But am I correct that you and Mr. Bushnell negotiated it?

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A Which one?

Q The July 1, 1972 agreement.

A No.

Q Were you involved at all --

A No, sir.

Q -- prior to February of 1973 with Atari?

A No, sir.

Q What was your very first contact with Atari, personally?

A As an acquaintance in the late summer of '72, as a business relationship early in '73.

Q What was the occasion of your first acquaintance in late summer of '72?

A He visited our factory on his way to the airport.

Q Mr. Bushnell visited your factory?

A Mr. Bushnell.

MR. WELSH: I am not sure the record is clear, Mr. Anderson. You said first contact with Atari, and I think the witness is thinking of first contact with Mr. Bushnell. I am not sure that --

By Mr. Anderson:

Q In your statement that your first contact was in the late summer of 1972 --

A I don't know when Atari was officialized as Atari, so when I refer to Atari and Nolan Bushnell, I am referring to insufficient knowledge as to when Atari was made into a manufacturing company.

Q Your first acquaintance, then, with Atari or Bushnell was in the summer of '72?

A Late summer.

Q Late summer of '72, and the occasion was when Bushnell visited your plant?

A Correct.

Q When you say your plant, what --

A Midway.

Q The Midway plant. And where is that located?

A Schiller Park.

Q Can you be more precise on the date of that visit?

A No, sir. I would guess September or October of '72.

MR. ANDERSON: Has the messenger now delivered the earlier agreement, Mr. Welsh?

MR. WELSH: Yes.

MR. ANDERSON: And may I see a copy of it?

MR. WELSH: Yes. Now, I might say that this is a document which is produced on behalf of Bally. It

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was not a document which was in the possession of or under the control of anyone at Midway. However, to expedite the proceedings, I am willing to furnish it at this time.

MR. ANDERSON: It is the document, though, that is incorporated by reference in paragraph 7 of Ross Deposition Exhibit 2?

MR. WELSH: Yes. Yes, but it is not a Midway document.

MR. ANDERSON: Are you suggesting Midway did not have a copy of this in its possession?

MR. WELSH: Yes. Yes.

MR. ANDERSON: And it had perhaps never seen it before?

MR. WELSH: I didn't say that. There was simply no copy of that document in any of the files of Midway.

Just so the record is clear, I -- just in discussing this with Mr. Ross -- learned that at one time he did have a copy of this in his files.

MR. ANDERSON: "This" being the royalty agreement you have just handed me?

MR. WELSH: Yes. Yes.

MR. ANDERSON: All right. I will have the

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reporter mark as Ross Deposition Exhibit 3 the royalty agreement that you have just handed me.

(The document above referred to was marked Ross Deposition Exhibit 3 for identification.)

MR. HERBERT: Is that agreement marked in confidence?

MR. WELSH: Yes.

If there is any testimony in respect to that, I would like it subject to that confidential understanding.

MR. ANDERSON: And by "that" you mean Deposition Exhibit No. 3?

MR. WELSH: Yes.

MR. ANDERSON: And you wish to have the royalty agreement, Deposition Exhibit No. 3 also kept in confidence?

MR. WELSH: Yes.

MR. ANDERSON: Pursuant to our stipulation?

MR. WELSH: Yes.

MR. ANDERSON: All right.

(Whereupon the following portion of the deposition was designated as Confidential and will be separately transcribed:)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a Corporation, and SANDERS ASSOCIATES, INC., a Corporation, Plaintiffs, v. BALLY MANUFACTURING CORPORATION, a Corporation, CHICAGO DYNAMIC INDUSTRIES, INC., a Corporation, ATARI, INC., a Corporation, ALLIED LEISURE INDUSTRIES, INC., a Corporation, EMPIRE DISTRIBUTING, INC., a Corporation, and MIDWAY MFG. CO., a Corporation, Defendants.	Civil Action No. 74 C 1030

(The following portion of the deposition OF HENRY ROSS was deemed to be confidential:)

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By Mr. Anderson:

Q Mr. Ross, have you ever seen Deposition Exhibit No. 3 before?

A Yes, sir.

Q And when did you last see it, in other words, most recently?

A Three to four months ago.

Q On what occasion?

A Was your original question when did I read it or see it? There is a difference. I will explain it to you.

MR. ANDERSON: Can you read the question?

(The question was read.)

THE WITNESS: The last time I read it was probably a year ago.

MR. WELSH: I think the question was --

THE WITNESS: Several months ago I turned over my complete file to Mr. Welsh, our attorney, which included the royalty agreement.

By Mr. Anderson:

Q And at that time you saw it but didn't read it, is that what you are saying?

A That is correct.

Q So that you know that several months

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ago you did turn this royalty agreement or a copy of it over to Mr. Welsh?

A Correct. I turned over my copy to him.

Q Was that an executed copy, an actual copy with the signatures?

A It was a photostatic copy. I don't know if it were executed.

Q When did you first see the royalty agreement, Exhibit 3?

A Roughly a year ago.

Q Did you see it prior to February 22, 1973, the date of Exhibit 2?

A I don't think so. I really don't remember.

Q Did you have any knowledge of its terms, the terms of Exhibit 3, prior to your approval --

A I had a general knowledge of its terms.

MR. WELSH: Would you let him finish the question?

THE WITNESS: I am sorry.

By Mr. Anderson:

Q You had a general knowledge of the terms of the royalty agreement, Exhibit 3, prior to February 22, 1973, the date of Exhibit 2?

A Yes.

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Q How did you gain that general knowledge?

A I cannot be sure if I received the information over the telephone or whether I looked at it at Bally. I cannot remember.

Q Prior to February 2 of 1973, had Midway manufactured any video games?

A No, sir.

Q When did Midway manufacture its video game?

A Approximately April 1, 1973.

Q Was that first video game a Pong type of game?

A Yes,sir.

Q In contrast to an Asteroid?

A Yes, sir.

Q Was a royalty paid to Atari based upon that first manufactured video game?

A Yes, sir.

Q Did Midway subsequently continue to make the video game that they first made in about April of 1973?

A Did we continue making the games?

Q Right. You made the first one on April 1, 1973?

A Yes, we continued.

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Q Are you still making that machine today?

A No, sir.

Q Is Midway still making video games today?

A We have not made any for approximately one month, two months.

Q Is that merely because of production scheduling or have you terminated manufacturing?

A Market conditions did not dictate making any further video games.

Q The first game that you made on April 1, 1973 was of the Pont type. Was it identical to the VP-1 of Atari, do you know?

A Yes, sir.

Q Was it made from their specifications?

A Yes, sir.

Q Were any component parts purchased from Atari?

A Some to help us get started.

Q What component parts were purchased from Atari at the beginning?

A Primarily printed circuits and a few integrated circuits.

Q Was there a point in time when Midway ceased purchasing printed circuits from Atari?

A A few months later.

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Q Was there a point in time when Midway ceased purchasing integrated circuits from Atari?

A You are talking about an area I am not familiar with. I couldn't answer that. Generally speaking we never did get many integrated circuits from them.

Q Up until the termination of manufacture one or two months ago, did Midway still have the VP-1 machine in the line?

A No, sir.

Q When was the VP-1 last made?

A Approximately September of '73.

Q Was it replaced by a soccer machine?

A Yes, sir.

Q What was the soccer machine?

A Asteroid.

Q And was that the same as the Model VP-1 Syzygy machine?

A No, sir.

Q 2, I am sorry, VP-2.

A Yes, sir.

Q Syzygy VP-2 machine?

A Yes, sir.

Q Was it made to their specifications?

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A Yes, sir.

Q Did you purchase any component parts for the VP-2 from Atari?

A To my knowledge a few to get started, to the best of my knowledge.

Q When was the first VP-2 made at Midway?

A Approximately September, 1973.

Q Did Midway pay a royalty to Atari based upon the manufacture of the VP-2?

A No, sir.

Q In the agreement Exhibit 2, paragraph 7 requires that "Midway shall pay Atari in accordance with the previous agreements established between Atari and Bally and dated July 1, 1972."

And in Ross Deposition Exhibit 3, which is the royalty agreement of July 1, 1972, I presume from what you have testified, it requires that "On each game accepted by Bally from Bushnell a 3 per cent royalty on our selling price of the game will be paid."

Was that 3 per cent royalty paid to Atari on the VP-2 machine?

A No, sir.

Q Do you know if there was a reason why that

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royalty was not paid?

MR. WELSH: I just want to renew the claim of confidentiality with respect to all of these questions involving this agreement.

MR. ANDERSON: That is acceptable.

THE WITNESS: The game in question --

MR. WELSH: If you have --

THE WITNESS: There is not. On that particular game, the second model I discussed with Nolan Bushnell, and he subsequently agreed that we did not owe any royalties on this model. There was a serious question whether he did not breach his original contract by he himself building the same model. We agreed not to make a point of it where he may have been in violation, and compromised, and he agreed and I agreed that we wouldn't pay any royalty, all verbally.

By Mr. Anderson:

Q By verbally, you mean oral?

A Oral, on the phone.

Q On the phone?

A On the phone.

Q Were there any personal meetings involved in that discussion?

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A No, sir.

Q How did that discussion,or series of discussions if there were more than one, first come up? Did you raise it or did he?

A I don't remember.

Q When you say that Bushnell was making the VP-2 in what you thought was violation of your agreement -- is that correct?

A Violation of his agreement with Bally.

Q -- it was your point of view that Bushnell had made the VP-2 in violation of his agreement with Bally, am I correct?

A Correct.

Q And for that reason, Midway felt it should not pay a royalty on the VP-2?

A Correct.

Q Do you know whether it was Bushnell personally who was making the VP-2 or some company that he operated or had a relationship with?

A I would suggest it was Atari.

MR. WELSH: If you know.

THE WITNESS: I say yes, Atari, because the game was built at that point in time where Atari was firmly established.

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MR. WELSH: I think I ought to caution the witness to answer questions only of facts which are your personal knowledge.

THE WITNESS: Thank you.

By Mr. Anderson:

Q Has Midway made any other video games other than the VP-1 and the VP-2?

A Yes, sir.

Q What other video games has Midway made?

A Winner IV, Roman numeral IV.

Q Winner W-i-n-n-e-r?

A Right.

Q Roman numeral IV?

A Right.

Playtime.

Q P-l-a-y hyphen t-i-m-e?

A One word.

Leader, period.

Q What did Midway call the VP-1 which Midway marketed it?

A Winner.

Q Just Winner?

A Just Winner.

Q And did Midway call the VP-2 Asteroid?

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A Yes, sir.

Q Did Midway pay royalties to Atari for the production of Winner IV?

A No, sir.

Q Did Midway pay royalties to Atari for Playtime?

A No, sir.

Q Did Midway pay royalties to Atari for Leader?

A No, sir.

Q I think you indicated that before Mr. Blahuta, B-l-a-h-u-t-a, was permitted to go to Atari, Mr. Bushnell or Atari required this agreement of February 22, 1973, Exhibit 2, am I correct?

A Yes, sir.

Q Following that date, then, did Mr. Blahuta go to Atari?

A He was there before the agreement was made, and the agreement was made while he was there.

Q For approximately how long was Mr. Blahuta there prior to February 22, 1973, the date of the agreement, Exhibit 2?

A Approximately one day.

Q Did you send Mr. Blahuta to California?

A Yes, sir.

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Q For what purpose did you send him to California on that occasion, around February 22, 1973?

A To obtain sufficient engineering information to build a prototype of the Pong-type game.

Q Did Mr. Bushnell know that Mr. Blahuta was coming before he came?

A Yes, sir.

Q Had you understood that Mr. Blahuta would be given information when you sent him?

A Yes, sir.

Q On what basis did you believe that he would be given information when you sent him?

A We had agreed to the royalty previous to his departure.

Q Was that the agreement Exhibit 3 or some other agreement?

A Exhibit 2.

Q Exhibit 2 was signed after Mr. Blahuta arrived in California?

A Correct.

Q What was the agreement that formed the basis on which you sent him to California in the first instance?

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A We had agreed to every one of these points prior to his departure.

Q And how did that agreement come about? Was that oral or --

A It was oral, by phone.

Q All by phone?

A All by phone.

Q Was it all by phone between you and Mr. Bushnell?

A Yes, sir.

Q Were there any other participants in that agreement at all?

A No, sir.

Q Was it based in any way upon the prior royalty agreement Exhibit 3?

A No, sir.

Q Over what period of time did you and Mr. Bushnell orally negotiate the agreement prior to February 22, 1973?

A A week to two weeks.

Q What other contacts had you had with Atari, if any, following your meeting in late summer of '72 and your negotiations just prior to February of '73?

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A I saw him in the early fall or late summer at the MOA, Music Operators of America convention in Chicago.

Q This was, I gather, subsequent to your first meeting with him at the plant, was it?

A Yes, sir.

Q What other contacts did you have with Mr. Bushnell between your first meeting with him at the plant and your negotiations shortly prior to February of '73?

A None, except what I just mentioned.

Q Do you know what, if any, activity occurred between Bally or Midway or any of its companies and Bushnell or Atari under the royalty agreement of about July 1, 1972, Exhibit 3?

A Would you repeat the first part of that question?

(The question was read.)

THE WITNESS: Just hearsay.

By Mr. Anderson:

Q And what have you heard?

A He brought in the Pong to Bally. He brought in a pin game into Bally.

That's it.

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Q Did he bring both these in on a single occasion, do you know?
A I don't know.
Q Do you know with whom he dealt at Bally?
A I don't know. I presume John Britz..
Q From whom did you hear the fact that he brought in a pong game and a pin game?
A I don't remember.
Q Do you know if any royalties were paid or any payments were made to Bushnell or Atari under the agreement Deposition Exhibit 3?
A No, sir.
Q You do not know?
A No.

(Whereupon the following portion of the deposition was deemed not to be confidential and is made part of the general deposition:)

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(The following portion of the deposition was deemed not to be confidential:)

By Mr. Anderson:

Q I think you said you had been secretary-treasurer since what, 1955?

A '58.

Q '58. Where you with Bally prior to that time?

A No, sir.

Q So you joined Midway or Bally in 1958?

A My partner and I formed the company in 1958.

Q You formed what, Midway?

A Correct.

Q And who was your partner?

A Mr. Wolverton.

MR. WELSH: Did you wish to make some correction with respect to the date?

THE WITNESS: We did correct it.

By Mr. Anderson:

Q 1958, is that correct?

A Correct.

Q And you and Mr. Wolverton in 1958 formed a partnership, is that correct?

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A A corporation.

Q A corporation?

A Yes.

Q What was the name of the corporation?

A Midway Manufacturing Co.

Q Was it related in any way to Bally?

A No, sir.

Q What was the nature of the business of Midway at that time?

A Manufacuters of coin operated amusement games.

Q When did Midway first become related to Bally?

A 1969.

Q Was that by merger or some other combination?

A Yes, sir.

Q By merger?

MR. WELSH: If you know.

THE WITNESS: I really don't know the terminology, pooling, merger, acquisition.

By Mr. Anderson:

Q Was all of the stock of Midway then purchased by Bally?

A Bally, correct.

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Q At the time of the merger, approximately how many employees did Midway have?

A 150 to 175.

Q Approximately how many employees did Bally have at that time, if you know?

A I wouldn't know.

Q What was the nature of Bally's business at the time of the combination in 1969?

A They were also manufacturers of coin-operated amusement games as well as slot machines.

Q And you stated, I think, that your plant is in Schiller Park?

A Yes, sir.

Q And that is the Midway plant?

A Yes, sir.

Q Is that the only plant that Midway operates?

A Yes, sir.

I am sorry. We have 5,000 feet across the street and a warehouse of 10,000 square feet in River Grove.

Q When you say "across the street" you mean in Schiller Park?

A In Schiller Park.

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Q Across from the manufacturing facility?
A Correct.
Q Does Midway issue an annual report?
A No, sir.
Q Does Midway issue or have any sort of annual reports of profit and loss or balance sheet?
A Yes, sir. Up until this year we had an annual statement.
Q Up until the beginning of 1974?
A Yes, sir.
Q So up until December 31, 1973, Midway had an annual report of some sort?
A Correct.
Q And what happened to change that?
A I was going to say the certified public accountants. I don't know the reason. Arthur Young, who is our CPA, is handling it differently.
Q And how is it handled now?
A It is on a consolidated statement form.
Q And that is consolidated with Bally?
A Yes, sir, and its affiliates.
Q And all of its other subsidiaries or affiliates?
A Yes, sir.

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Q Is the consolidated data accumulated on a running basis or only at the end of the year?

A Would you repeat that question?

(The question was read.)

THE WITNESS: On a quarterly basis as well as the end of the year.

By Mr. Anderson:

Q Do you hold any position in Bally?

A No, sir.

Q Does any employee of Midway hold a position in Bally also?

A Mr. Wolverton is a director of Bally.

Q Prior to forming Midway, what was your occupation?

A I was an engineer with United Manufacturing Company of Chicago, Illinois.

Q United Manufacturing. What is the nature of their business?

A Same business as I went into.

Q Did you hold a title there?

A Not really.

Q For how long were you with United?

A Eleven years.

Q Would you briefly state your education after

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high school?

A Approximately 3-1/2 years of college.

Q Was that in an engineering field?

A Yes, sir.

Q At what institution?

A I wish you didn't ask. I went to about a half dozen. Do you still want to know?

Q Well, just the major ones, perhaps, the ones that you were at for some time.

A Armour Institute, George Washington University, and so forth.

Q Can you briefly describe Midway's distribution organization for its products?

A We set up distribution centers in the major population centers. In the United States we have approximately 40 distributors, approximately 6 in Canada, and another approximate dozen throughout the world.

Q Are those distributors a part of Midway or are they separate companies?

A Separate companies.

Q In every case, the 40 U. S. distributors are all separate companies?

A We are referring to Midway now?

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Q Midway.

A Correct.

Q And the six in Canada are also separate companies?

A Yes, sir.

Q And the 12 throughout the world are also separate companies?

A Yes, sir.

Q Are any of those partially owned by Midway or Bally?

A Yes, sir.

Q Of the 40 U.S. distributors, how many are partially owned by Midway or Bally?

A Three by Bally.

Q Are they wholly-owned by Bally or partly-owned?

A Two of them are wholly-owned and one is approximately 70 per cent owned.

Q What are the names of the two that are wholly-owned?

A Empire Distributing and Advance Distributing.

Q Advance Distributing?

A Yes.

Q And is that in San Francisco?

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A Correct.

Q And what is the name of the one that is 70 per cent owned?

A Approximately 70 per cent. Robert Jones Distributing Company.

Q Where are they located?

A They have offices in Boston and Syracuse, New York.

Q Of the six in Canada, are they wholly-owned?

A No, sir.

Q Are they partially owned?

A No, sir.

Q Are they completely independent?

A Yes, sir.

Q Of both Bally and Midway?

A Yes, sir.

Q And of the 12 throughout the world, are they wholly-owned?

A No, sir.

Q Are any of them partially-owned?

A Yes, sir.

Q By Bally or Midway?

A Bally.

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Q How many of them--

MR. WELSH: Counsel, I wonder what relevance this has?

MR. ANDERSON: Well, I am just establishing the business relationship of this fairly vast set of subsidiaries.

MR. WELSH: But they are outside the United States.

MR. ANDERSON: And the way they market. I will get to whether they ever handled the video games in just one second in this country.

MR. WELSH: But how is that relevant to this action which is for patent infringement of U. S. patents?

MR. ANDERSON: If a product was made in this country and shipped abroad, it is certainly very relevant.

MR. WELSH: Well, how it is handled abroad or who handles it abroad, I don't see. If you want to ask if they made some here and shipped them over, fine, but I don't see that it has any relevance to the issues here.

MR. ANDERSON: Well, as you know, the test of relevance in discovery is extremely liberal.

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MR. WELSH: I know it is quite broad, but there is a limit.

MR. ANDERSON: We will just finish up this line and go on to the nature of the relationship.

Q I think you said of the 12 that are --

MR. WELSH: I am going to instruct the witness not to answer, because I don't see any relevance to this.

MR. ANDERSON: I don't think relevance is a very good basis for instructing a witness not to answer.

MR. WELSH: If you can tell me why you want to know what their relationship is with various foreign distributors, maybe I will remove my objection, but I just don't see what it has got to do with infringement of U. S. patents.

MR. ANDERSON: These companies distribute coin-operated games and products of, I presume, Midway and others, and I think we are entitled to know the nature of the business.

MR. WELSH: You are entitled to know the nature here, perhaps.

MR. ANDERSON: Well, and if any product is made here and sold abroad, we are entitled to know that, very clearly, whether it is Midway's or someone

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else's product.

I certainly think we are entitled to know if these companies are selling coin operated games, whose they are selling, if they are made in this country.

MR. WELSH: I don't see why you need to know whose.

MR. ANDERSON: They are a part of your clients or one of your clients. I trust you won't stand on the formality of making sure I only ask this witness about Midway and if he knows --

MR. WELSH: If he knows, then I have no objection to his answering questions.

MR. ANDERSON: We can certainly short-cut an awful lot of going around in circles if we do it that way.

MR. WELSH: I agree, but I just don't see what relevance this foreign distribution system has to the issues of validity and infringement of the patents here.

MR. ANDERSON: I think it is quite apparent that as long as this company has foreign subsidiaries --

MR. WELSH: We will admit that they manufacture certain machines here and they distribute them through a distributor organization in foreign

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countries, and what you need to know beyond that, I don't know.

MR. ANDERSON: Well, it is quite possible that those same companies ship foreign made goods to this country, ship goods made by other manufacturers from this country abroad through Bally or Midway.

MR. WELSH: What has that got to do with the ownership of the companies?

MR. ANDERSON: It could have a great deal to do if Midway controls these companies. It could have a great deal to do with it.

Q Mr. Ross, we were talking about the 12 distributors throughout the world, and I ask you how many of those is partially or wholly-owned by Midway or Bally?

MR. WELSH: I am going to object to the question, because I think you are getting into an area that involves confidential information of Bally, and I don't see that it has any relevance to any of the issues here in the lawsuit, and I am going to instruct the witness not to answer.

MR. ANDERSON: I doubt very much it is confidential. I suspect it is of public record, but I don't know it. I imagine it is in your annual report.

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MR. WELSH: Okay, I will withdraw the objection.

MR. ANDERSON: All right.

Q Can you answer the question, then, or would you like it rephrased.

MR. WELSH: I will still object to it as irrelevant.

MR. ANDERSON: I will accept that subject to your objection.

THE WITNESS: Bally has co-affiliated distributors in Europe. What percentage of ownership, I don't know.

By Mr. Anderson:

Q Does Midway have any?

A No, sir.

Q Has Midway ever shipped video games to any of the 40 distributors in the United States?

A Yes, sir.

Q To all of them?

A Yes, sir.

Q Has Midway ever shipped video games to the 6 distributors in Canada?

A Yes, sir.

Q Those are video games that were made here in the Chicago area, is that correct?

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A Yes, sir.

Q Has Midway shipped to all 6 of the Canadian distributors?

A I believe so.

Q Has Midway shipped to any of the 12 distributors throughout the world,video games?

A Yes, sir.

Q Has it shipped to all 12 of them?

A I believe so.

Q Does Bally or Midway have any manufacturing facilities outside of the United States?

A Yes, sir.

Q Is it Bally or Midway that has them?

A Bally.

Q In what countries?

A Ireland, Belgium, to the best of my knowledge.

Q Do you know whether any any video games have ever been made at the Ireland plant?

A Yes, I know if there were any made.

Q And what is the answer? Were any --

A They were not made.

Q Were any assembled over there?

A No, sir.

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Q Were any ever made at the Belgian plant?

A I don't know how to answer that question. We have part ownership, we have some ownership in the Belgian plant and part ownership of another company also in Belgium. They assembled it.

Q What is the name of the company that assembled video games in Belgium?

A I should know, but I don't.

Q Do you know if they are assembling video games at the present time at the Belgian plant?

A No, I don't. I don't.

Q Were the parts necessary for assembly at the Belgian plant provided by Midway?

A Some.

MR. WELSH: Counsel, I thought the subject of inquiry today was going to be the relationship between Midway and Atari, and products of Atari. It seems to me we are getting a little afield from that.

MR. ANDERSON: Well, the subject is definitely jurisdiction and venue, and I think I have limited it very carefully to that.

MR. WELSH: This has nothing to do with Atari.

MR. ANDERSON It has perhaps to do with jurisdiction and venue.

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MR. WELSH: Of Atari?

MR. ANDERSON: It may even have something to do with Atari, seeing that Atari provided the design.

MR. WELSH: I think you are getting pretty remote.

By Mr. Anderson:

Q What parts were provided by Midway to the Belgian company?

A Printed circuits, integrated circuits, miscellaneous electrical components.

Q What parts were not provided to the Belgian company by Midway?

A Everything that is left that I didn't state.

Q And that would include a cabinet?

A Glass, handles, transformer, bulbs, cartons, wire, screws, nuts, printed information.

Q That would be literature, you mean?

A Yes.

Q I gather all of the basic elements of the game were provided by Midway, then --

A No, sir.

Q -- and the housing, transformer --

A No, sir.

Q What basic elements of the game were not

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provided?

A We did not provide all the elements.

Q Other than hardware, cartons and printed literature --

A We supplied them with these components to get them started, period, and in most cases they obtained their own.

Q Do you know which of the games made by Midway, Winner IV, Playtime, Leader, Winners or Asteroid was involved in the dispute with Allied Leisure?

A Winner IV.

Q I don't recall. You may have answered this. But how was Winner IV related to the specifications provided by Atari, if at all?

A The original model was two player. Winner IV was four player.

Q Did the conversion from the Winner to Winner IV constitute merely a modification or was it a basically new design?

A I would say it was a modification and a new design, both.

Q Did Winner IV contain any components of Winner in an unmodified form?

A Yes.

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Q What components?

A That is out of my category. I couldn't answer.

Q Or could you answer the other way around, what components had to be changed?

A I cannot answer that.

Q Are you familiar with Universal Research Laboratories?

A Yes, sir.

Q Have you ever had any dealings with Universal Research Laboratories?

A Yes, sir.

Q In the video game field?

A Casual conversations.

Q Any business dealings with Universl Research Laboratories?

A No, sir.

Q In any field?

A No, sir.

Q When did you have casual conversations with Universal Research Laboratories?

A When we started building the Winner, we couldn't build enough logic boards. We asked for assistance from them. They couldn't help us.

Q Did you actually obtain bids from them

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for making logic?

A No, sir.

Q Did you ever submit anything to them for proposals?

A No, sir.

Q Did you personally talk to someone at URL?

A Yes, sir.

Who did you talk to at URL?

A I cannot remember their names.

Q You indicated that Bushnell or Atari delivered a pong game to Midway, am I correct?

A No.

Q To Bally?

A Correct.

Q Did that pong game ever come into the possession of Midway?

A I really don't remember.

Q Was an Asteroid game also delivered to Bally?

A I cannot answer that.

Q Did one ever come into the possession of Midway --

A Yes, sir.

Q -- from Atari?

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A We received one and I don't know if I got it from them or from another source.

Q In addition to the one visit that you referred to when Mr. Bushnell visited your plant, have any other personnel of Atari ever visited any facility of Bally or Midway that you know of?

A I cannot speak for Bally. I had one visit, one lunch with their sales manager about a year ago.

Q Who is he?

A Sales manager.

Q What is his name?

A I don't remember your name. I cannot remember his.

Q Is he the national sales manager for Atari?

A Yes, sir.

Q Was that in Chicago?

A In Schiller Park.

Q In Schiller Park. At your plant?

A Yes, sir.

Q What was the subject of that visit?

A Courtesy call.

Q Was any business discussed at all?

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A No, sir.

Q Have any other personnel related to Atari ever visited Midway?

A Not to my knowledge.

Q In what form were the specifications from Atari received with respect to the video games?

A Mostly wiring diagrams.

Q Were they all received at one time or over a period of time?

A I can't remember.

Q I think you said the printed circuit board and integrated circuits that you purchased over a period of months from Atari were for the VP-1, the Pong.

A Right.

Q Did you purchase any for the VP-2?

A Small amounts.

Q Did they conform to the specifications that you received from them, do you know?

A I presume so.

Q From what other sources did you obtain printed circuit boards, if any?

A We make our own printed circuit boards.

Q You make your own printed circuit boards

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at Midway?

A Yes.

Q Does Midway purchase any components from Bally?

A Any what?

Q Components.

A Yes, sir.

Q Any components for video games?

A No, sir.

Q Has Midway ever purchased any components from Bally?

A No, sir.

Q When Midway purchases components from Bally are they invoiced to Midway just as they are invoiced to any other customer of Bally?

A No, sir.

Q And does Midway pay in the form of a check, or how is payment made?

A I presume it is in the form of a check.

Q You don't know?

A Yes, it is paid in the form of a check.

Q In Midway's manufacture of video games, did Midway use a commercially available television receiver?

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A Repeat that question.

(The question was read.)

THE WITNESS: What do you mean by commercially available?

By Mr. Anderson:

Q In other words, from some TV source?

A Yes, sir.

Q And was it a television receiver or something less or different from a television receiver?

A Both, television receiver and a monitor.

Q Were they used concurrently or successively?

A Successively, the TV receiver first, the monitor second.

Q Were they obtained from the same source?

A No, sir.

MR. ANDERSON: Let's take a short break.

(A short recess was taken.)

By Mr. Anderson:

Q Mr. Ross, has Atari at any time provided any assistance on servicing Midway video games?

A Not to my knowledge.

Q Has Atari ever provided any consultation service in the field that you know of for Midway?

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A Not to my knowledge.

Q Does Midway have a service organization?

A Yes, sir.

Q Is it separate from the distributor organization?

A No, sir.

Q Is it the same as the distributor organization?

A Repeat that last question. Is it the same as the distributor organization?

Q Yes.

A No, sir.

Q Then it is separate from the distributor organization?

A Yes. Yes.

Q And does it function out of the Schiller Park facility?

A It functions in it.

Q Is all servicing performed at the Schiller Park facility?

A No.

Q And is there a field servicing organization?

A I will answer you a little differently. Each distributor has their own service. We provide

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each distributor with help when they have a problem, but primarily 98 per cent of all servicing in the field is done by the distributors.

Q Does Atari have any interest in this Belgian operation?

A No, sir.

Q Does Atari have any interest that you know of in any Midway or Bally operation?

A No, sir.

Q Is there any other relationship between Atari and any Midway or Bally company that you know of that we have not discussed this morning?

A No, sir.

Q Is there any relationship that you know of between Allied Leisure and any Midway or Bally company other than the one we discussed this morning?

A No, sir.

Q And that is of course the lawsuit, which is the only one I think we discussed. Is that correct?

A I didn't hear that last sentence.

Q I am sorry. I think the only relationship that we have had any testimony about this morning was the litigation between Allied and Midway?

A Allied, yes. Yes.

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Q Yes.

A I thought you said Atari.

Q And if I did, I misspoke.

Do you know of any other relationship between Allied and Midway or Bally other than that litigation?

A What do you mean by relationship?

Q Business relationship of any kind.

A No, sir.

MR. ANDERSON: I guess we have no further questions.

MR. WELSH: I don't have any cross examination.

MR. HERBERT: I have no questions.

MR. ANDERSON: I would suggest that we break now.

(Discussion off the record.)

MR. ANDERSON: Mr. Ross can sign his deposition before any notary public?

MR. WELSH: Yes.

MR. ANDERSON: I would like to retain possession of the exhibits, if that is all right.

MR. WELSH: That is all right, except I would like copies.

MR. ANDERSON: Sure.

MR. WELSH: This is my own copy of Exhibit 3.

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MR. HERBERT: I don't have a copy of that, either.

MR. ANDERSON: We will provide both of you with copies and I presume you will want to get that stipulation fixed up and signed as soon as possible on the confidential relationship.

MR. WELSH: Yes.

Henry Ross
Deponent

Subscribed and sworn to before me this 23rd day of July, 1974.

Notary Public

LEON M. GOLDING AND ASSOCIATES, CHICAGO

UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION) ss:
STATE OF ILLINOIS)
COUNTY OF COOK)

I, Michael J. Shapiro, a notary public in and for the County of Lake and State of Illinois, do hereby certify that Henry Ross was by me first duly sworn to testify the whole truth and that the above deposition, signed by him, was recorded stenographically by me and was reduced to typewriting under my personal direction.

I further certify that the said deposition was examined and read over by the said deponent and was signed by him in the presence of a qualified notary public, and that the said deposition constitutes a true record of the testimony given by said witness.

I further certify that the several exhibits referred to herein were marked for identification as is set forth in said deposition.

I further certify that the said deposition was taken at the time and place specified and that the taking of said deposition commenced on the 25th day of June, 1974, at 9:30 o'clock in the morning, and was completed at 11:40 o'clock in the

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morning of said day.

I further certify that Mr.Theodore W. Anderson and Mr. James Williams, of the firm of Neuman, Williams, Anderson & Olson, of 77 West Washington Street, Chicago, Illinois, and Mr. Thomas A. Briody, Corporate Patent Counsel, the Magnavox Company, Fort Wayne, Indiana, appeared as attorneys for the plaintiffs; and Mr. Thomas O. Herbert, of the firm of Flehr, Hohbach, Test, Albritton & Herbert, of 160 Sansome Street, 15th Floor, San Francisco, California, appeared as attorney for the Defendant Atari, Inc., and Mr. Donald L. Welsh, of the firm of Fitch, Even, Tabin & Luedeka, of 135 South LaSalle Street, Chicago, Illinois, appeared as attorney on behalf of Defendants Bally Manufacturing Corporation, Empire Distributing, Inc., and Midway Manufacturing Co.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this actinn.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at Chicago, Illinois this 1st day of August, 1974.

Notary Public